

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FRANKLIN MCMILLION)
)
Plaintiff)
)
vs.) **CIVIL ACTION NO.**
) **2:07-CV 563-MHT**
STATE OF ALABAMA, et al.)
)
Defendants.)

**DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, OR IN
THE ALTERNATIVE, MOTION FOR A MORE DEFINITE STATEMENT**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants hereby move this Court to dismiss Plaintiff's complaint for failure to state a claim. Plaintiff has failed to allege the basic elements of a claim against the Defendants as a matter of law.

Alternatively, Defendants move pursuant to Rule 12(e) of the Federal Rules of Civil Procedure, for an Order from this Court requiring Plaintiff to provide a more definite statement as to the alleged claim against the Defendants.

In support of its Motions, the Defendants submit the brief filed contemporaneously herewith. WHEREFORE, premises considered, Defendants respectfully request that the Court dismiss the Plaintiff's complaint or alternatively, Defendants request that the Court require the Plaintiff to provide a more definite statement as to the claims against the Defendants.

Respectfully submitted this 29th day of August, 2007.

s/ Aaron L. Dettling _____
One of the Attorneys for Defendant,
Alabama Department of Revenue

OF COUNSEL:

Aaron L. Dettling
Balch & Bingham LLP
1710 6th Avenue North
P. O. Box 306 (35201-0306)
Birmingham, Alabama 35203
(205)251-8100

s/Alice Ann Byrne
Attorney for Alabama State Department
of Personnel

OF COUNSEL:

Alice Ann Byrne
State of Alabama, Personnel Department
300 Folsom Administrative Building
Montgomery, Alabama 36130

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of August, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Robert F. Childs, Esq.
Wiggins, Childs, Quinn & Pantazis, LLC
The Kress Building
301 19th Street North
Birmingham, Alabama 35203

s/Aaron L. Dettling
OF COUNSEL